IN THE HIGH COURT OF BOMBAY AT GOA

LETTERS PATENT APPEAL NO.6 OF 2001

Dattaram Anant Prabhu,
aged 45 years, businessman,
resident of H.No.127, Zaricha
wadda, Usgao, Goa ... APPELLANT

VERSUS

1. Tulsidas Narayan Prabhu,
residing at Gaunkarwadda,
Usgao, Goa;

2. Digambar Atmaram Prabhu,
residing at Gaunkarwadda,
Usgao, Goa;

3. Comunidade of Usgao with
office at Usgao, Ponda, Goa;

4. Administrator of Comunidades,
North Zone with office at
Mapusa, Bardez,Goa;

5. Secretary (Registrar)
of Comunidade of Usgao,
Ponda, Goa;

6. Mamlatdar of Ponda with
office at Ponda, Goa;

7. The Goa Bank (Mapusa Urban
Co-operative Bank) Usgao Branch
Usgao, Ponda, Goa;

8. Administrative Tribunal
of Goa, Panaji, Goa ... RESPONDENTS.

Mr. M.B. D'Costa, Advocate for the Appellant.

Mr. V.P. Thali, Advocate for Respondents Nos. 1, 3 and 5.

CORAM : F.I. REBELLO &
P.V. HARDAS,JJ.

DATED : JUNE 18, 2003.

ORAL JUDGMENT

Petitioner herein had filed an election petition to unseat Respondent No.1 who was elected as the Attorney of the Managing Committee of the third Respondent for the triennium 2001 – 2004. The election petition came to be dismissed. The Petitioner herein filed an appeal before the Administrative Tribunal being Comunidade Appeal No.253 of 2000. The learned Tribunal in paragraph 5 of the Judgment proceeded on the footing that the Respondent No.1 was in Office for only two months and therefore held the provisions of Article 50 was not attracted in the facts and circumstances of the present case. Aggrieved by the said Order the Petitioner herein preferred a Petition under Articles 226 and 227 of the Constitution of India. The learned Judge of this Court treated the said Petition as Petition under Article 227 of the Constitution of India as reflected in paragraph 5 of the Judgment. In paragraph 4, the learned Judge, after setting out some facts, held that it concurred with the view taken by the Tribunal and chose not to interfere with the Order. It is this Order which is the subject-matter of the present Appeal.

2. The facts of the present case as noted

by the learned Tribunal are as set out in paragraph 27 of the reply filed by the Respondent No.1 before the Tribunal. In paragraph 27, it was contended that though he was elected as an effective attorney on 22-11-2000 but was allowed to discharge duties of Attorney in view of the interim Order granted by this Court in Writ Petition No.28 of 1999. In other words, therefore, he was not allowed to function as an Attorney for the term. Petition became infructuous because the triennium had come to an end.

3. At the hearing of the Letters Patent Appeal on behalf of the Appellant herein it is contended that the view taken by the Tribunal and approved by the learned Single Judge of the intepretation of Article 50 is not the correct view. The learned Counsel has taken us to the language of the Section. It is contended that the correct view on reading of the said Section and other provisions would be that if a person was elected/nominated for the triennium, then irrespective of the term that he has served, he is ineligible for either contesting or being nominated for the following triennium.

4. A perusal of the Judgment of the learned Tribunal as affirmed by the learned Single

Judge cannot result in holding that the learned Single Judge has finally concluded the interpretation of Article 50. To constitute a **ratio decidendi,** the Judgment must satisfy at least the following requirements: a) that the matter must be directly in issue; b) that the matter needs to be decided and c) it has been decided by giving reasons which are discernible. In the first instance, the Administrative Tribunal considering paragraph 27 of the Affidavit filed by the Respondent No.1 herein merely proceeded on the footing that in those circumstances the bar of Section 50 would not be attracted. In other words, Article 50 itself and its principal interpretation has not been given. The learned Single Judge has merely proceeded to concur with the view taken by the Tribunal. From the Judgment of the learned Single Judge at least we are unable to see any reasons given where the learned Judge has construed Article 50. One of the requirements, namely, of giving reasons which are discernible is absent and in these circumstances we are of the considered view that the true scope and intent of Article 50 is still open for consideration in an appropriate proceedings.

5. On behalf of the contesting Respondents their learned Counsel has contended that the Letters

Patent Appeal is not maintainable considering that the learned Judge himself has chosen to dispose of the matter under Article 227. We had been taken through several judgments by the learned Counsel for the Petitioner and Counsel for the Respondents. It is not necessary to refer to all the Judgments. Suffice it to say that a Division Bench of this Court in **Madhukar Chandrabhan Mohite v. Balkrishna Govind Sulakhe [1999 Vol.101(3)** Bom. L.R. 824] has considered the judgment of the Apex Court in **Umaji Keshao Meshram and Ors. v. Radhikabai and anr.(AIR 1986 SC 1272)** as also **Lokmat Newspapers Pvt. Ltd. v. Shankarprasad [1999(3) All Mah. R. 303(SC)]** and another judgment of this Court including Full Bench judgment and after so considering, one of the tests is to find out under which Article the learned Judge has proceeded to dispose of the Petition. In the instant case as pointed out, the matter arose out of an order in election petition. The only issue was whether the candidate there was qualified or not. The learned Judge proceeded to treat the Petition which was falling under Articles 226 and 227 as a petition under Article 227. Even if the interpretation of Article 50 was involved we have kept that question open. Considering that and in view of the judgment in **Madhukar's** case, (supra), in our opinion, the Letters Patent Appeal is not

maintainable and consequently the Letters Patent Appeal stands disposed of.

F.I. REBELLO,J.

P.V. HARDAS,J.

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